IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 245 of 2006 (M/B)

Date of decision: 11th July, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date: 11.07.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 245 of 2006 (M/B)

Archana Patnaik alias Dr. Archna Mathur Patnaik,
W/o Shri Santanu Patnaik,
presently residing at 150, Pandit-wari,
Phase – II, Dehradun ..... Petitioner

Versus

1. State of Uttaranchal through Home Secretary,
   Dehradun.
2. Station House Officer,
   Police Station Cantt., Dehradun
3. Dr. Santanu Patnaik S/o Late Sri Kamal Kanta
   R/o Department of Geography, Arunachal University,
   Doimukh, Arunanchal Pradesh.
4. Mrs. Annapurna Patnaik W/o Late Sri Kamal-Kanta,
   R/o Department of Geography, Arunachal University,
   Doimukh, Arunanchal Pradesh.
5. Mrs. Shivani Das Mahapatra @ Boodi
   W/o Sri S. N. Das Mahapatra
   R/o Shailesh Niwas, Bhaskar Ganj,
   Station Road, Baleshwar, District Puri (State of Orrissa)
6. Deputy Inspector General of Police (D.I.G.)
   Garhwal Range, Dehradun.
7. The Station House Officer, Police Station Ita-Nagar
   Arunachal Pradesh ..... Respondents

Sri Jitendra Chaudhary, Advocate for the petitioner.
Sri D.K. Sharma, Government Advocate for respondents 1 and 2.
None for respondents 3 to 7.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C. J. (Oral)

Sri Jitendra Chaudhary, Advocate for the petitioner.

Sri D.K. Sharma, Government Advocate for respondents 1 and 2.

None for respondents 3 to 7.

They are heard.

2. The petitioner has filed this writ petition for the following reliefs:

> "1. To issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1, 2 and 6 that investigation regarding the first information report (Annexure 1) dated 06.04.2005 lodged with case crime no. 35 of 2005 under Section 498-A/323/504/506 I.P.C. and ¾ D.P.Act, Police Station Cantt. District Dehradun by the petitioner against the respondent no. 3, 4 and 5 may be recalled from Police of Arunachal Pradesh and same should be carried out and completed by the respondent no. 2.
> 2. To issue a writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case in the interest of the petitioner.
> 3. To award the cost of this petition to the petitioner."

3. Sri Sharma, the learned Government Advocate, submits that the investigation of the case registered on the petitioner's report was transferred to Itanagar Police (Arunachal Pradesh) long back in the month of November, 2005 and in all probability, the Criminal Court in the State of Arunachal Pradesh must have taken cognizance of the case after completion of the investigation by Itanagar Police.

4. In this view of the matter, the petitioner's prayer for transfer of the investigation of the case registered on her report now in effect would mean transfer of the criminal case arising out of the petitioner's report, now pending before a Criminal Court in the State of Arunachal Pradesh.

5. In the above situation, the only remedy available to the petitioner is one under Section 406 Cr.P.C., which reads as follows:

> **"406. Power of Supreme Court to transfer cases and appeals.-**
>
> (1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court.
> (2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is

Attorney-General of India or the Advocate-General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case."

4. Thus, it is apparent that the criminal case, arising out of the petitioner's report pending before the Criminal Court in the State of Arunanchal Pradesh, cannot be transferred to a Criminal Court in the State of Uttaranchal in this writ petition by the High Court.

5. The writ petition, therefore, is liable to be dismissed and is hereby dismissed summarily.

(Prafulla C. Pant, J.) 11.07.2006

(Rajeev Gupta, C. J.) 11.07.2006

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